

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 06, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES G.,

Plaintiff,

V.

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 1:21-CV-03097-LRS

**ORDER GRANTING, IN PART,
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

BEFORE THE COURT are the parties' cross motions for summary
ment. ECF Nos. 13, 17. This matter was submitted for consideration without
rgument. Plaintiff is represented by Attorney Cory J. Brandt. Defendant is
sented by Special Assistant United States Attorney Jacob Phillips. The Court
viewed the administrative record, the parties' completed briefing, and is fully
med. For the reasons discussed below, the Court **GRANTS, in part,**
tiff's Motion for Summary Judgment, ECF No. 13, **DENIES** Defendant's
on for Summary Judgment, ECF No. 17, and **REMANDS** the case back to the
missioner for additional proceedings.

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JURISDICTION

2 Plaintiff James G.¹ protectively filed an application for Supplemental
3 Security Income (SSI) on February 20, 2019, Tr. 112, alleging an onset date of
4 January 1, 2018, Tr. 237, due to bipolar disorder, borderline personality disorder,
5 severe anxiety, major depression, serious insomnia/night terrors, memory issues,
6 and posttraumatic stress disorder (PTSD), Tr. 274. Plaintiff's applications were
7 denied initially, Tr. 147-50, and upon reconsideration, Tr. 164-66. A hearing
8 before Administrative Law Judge Jennifer B. Millington ("ALJ") was conducted
9 on November 18, 2020. Tr. 64-83. Plaintiff was represented by an attorney and
10 testified at the hearing. *Id.* The ALJ also took the testimony of vocational expert
11 Robin Cook. *Id.* The ALJ entered an unfavorable decision on December 17, 2020.
12 Tr. 15-27. The Appeals Council denied review on July 7, 2021. Tr. 1-5.
13 Therefore, the ALJ's December 17, 2020 decision became the final decision of the
14 Commissioner. The matter is now before this Court pursuant to 42 U.S.C. §§
15 405(g); 1383(c). ECF No. 1.

BACKGROUND

17 The facts of the case are set forth in the administrative hearing and
18 transcripts, the ALJ's decision, and the briefs of Plaintiff and the Commissioner.

20 ¹In the interest of protecting Plaintiff's privacy, the Court will use Plaintiff's
21 first name and last initial, and, subsequently, Plaintiff's first name only, throughout
this decision.

1 Only the most pertinent facts are summarized here.

2 Plaintiff was 48 years old at the date of application. Tr. 237. Plaintiff
3 completed the twelfth grade in 1989. Tr. 275. At application Plaintiff reported his
4 past work as auto detailer, body work/painter, and laborer. Tr. 275. He stated that
5 he stopped working on December 31, 2007 due to his impairments. Tr. 275.

6 **STANDARD OF REVIEW**

7 A district court's review of a final decision of the Commissioner of Social
8 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
9 limited; the Commissioner's decision will be disturbed "only if it is not supported
10 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
11 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
12 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
13 (quotation and citation omitted). Stated differently, substantial evidence equates to
14 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
15 citation omitted). In determining whether the standard has been satisfied, a
16 reviewing court must consider the entire record as a whole rather than searching
17 for supporting evidence in isolation. *Id.*

18 In reviewing a denial of benefits, a district court may not substitute its
19 judgment for that of the Commissioner. "The court will uphold the ALJ's
20 conclusion when the evidence is susceptible to more than one rational
21 interpretation." *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008).

Further, a district court will not reverse an ALJ's decision on account of an error

1 that is harmless. *Id.* An error is harmless where it is “inconsequential to the
2 [ALJ’s] ultimate nondisability determination.” *Id.* (quotation and citation
3 omitted). The party appealing the ALJ’s decision generally bears the burden of
4 establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

5 FIVE-STEP EVALUATION PROCESS

6 A claimant must satisfy two conditions to be considered “disabled” within
7 the meaning of the Social Security Act. First, the claimant must be “unable to
8 engage in any substantial gainful activity by reason of any medically determinable
9 physical or mental impairment which can be expected to result in death or which
10 has lasted or can be expected to last for a continuous period of not less than 12
11 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be
12 “of such severity that he is not only unable to do his previous work[,] but cannot,
13 considering his age, education, and work experience, engage in any other kind of
14 substantial gainful work which exists in the national economy.” 42 U.S.C. §
15 423(d)(2)(A).

16 The Commissioner has established a five-step sequential analysis to
17 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
18 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s work
19 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in “substantial
20 gainful activity,” the Commissioner must find that the claimant is not disabled. 20
C.F.R. § 416.920(b).

If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step two. At this step, the Commissioner considers the severity of the claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from "any impairment or combination of impairments which significantly limits [his or her] physical or mental ability to do basic work activities," the analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy this severity threshold, however, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(c).

At step three, the Commissioner compares the claimant's impairment to severe impairments recognized by the Commissioner to be so severe as to preclude a person from engaging in substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the enumerated impairments, the Commissioner must find the claimant disabled and award benefits. 20 C.F.R. § 416.920(d).

If the severity of the claimant's impairment does not meet or exceed the severity of the enumerated impairments, the Commissioner must pause to assess the claimant's "residual functional capacity." Residual functional capacity (RFC), defined generally as the claimant's ability to perform physical and mental work activities on a sustained basis despite his or her limitations, 20 C.F.R. § 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

At step four, the Commissioner considers whether, in view of the claimant's

1 RFC, the claimant is capable of performing work that he or she has performed in
2 the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
3 capable of performing past relevant work, the Commissioner must find that the
4 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
5 performing such work, the analysis proceeds to step five.

6 At step five, the Commissioner considers whether, in view of the claimant's
7 RFC, the claimant is capable of performing other work in the national economy.
8 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
9 must also consider vocational factors such as the claimant's age, education and
10 past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of
11 adjusting to other work, the Commissioner must find that the claimant is not
12 disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to
13 other work, analysis concludes with a finding that the claimant is disabled and is
14 therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

15 The claimant bears the burden of proof at steps one through four. *Tackett v.*
16 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five,
17 the burden shifts to the Commissioner to establish that (1) the claimant is capable
18 of performing other work; and (2) such work “exists in significant numbers in the
19 national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386,
20 389 (9th Cir. 2012).

21 **ALJ'S FINDINGS**

At step one, the ALJ found that Plaintiff has not engaged in substantial
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1 gainful activity since the date of application, February 20, 2019. Tr. 17. At step
2 two, the ALJ found that Plaintiff has the following severe impairments: chronic
3 low back pain with foraminal stenosis and degenerative disc disease; mild bilateral
4 hip osteoarthritis; bilateral plantar fasciitis; obstructive sleep apnea; diabetes
5 mellitus; history of heroin abuse, in remission; bipolar disorder; and PTSD. Tr. 17.
6 At step three, the ALJ found that Plaintiff's impairments or combinations of
7 impairments do not meet or equal the severity of one of the listed impairments. Tr.
8 17.

9 The ALJ then found that Plaintiff has the RFC to perform light work as
10 defined in 20 C.F.R. § 416.967(b) with the following limitations:

11 the claimant can stand and/or walk for four hours in an eight-hour
12 workday and sit for six hours in an eight-hour workday. The claimant
13 can occasionally climb, stoop, kneel, crouch, and crawl. The claimant
14 can have occasional exposure to extreme cold and hazards. The
claimant is limited to simple, routine tasks with no work interactions
with the public, but can adapt to occasional changes in a routine work
environment.

15 Tr. 21. The ALJ identified Plaintiff's past relevant work as a furniture mover and
16 found that he could not perform this past relevant work. Tr. 25. At step five, the
17 ALJ found that considering Plaintiff's age, education, work experience, and RFC,
18 there are other jobs that exist in significant numbers in the national economy that
19 Plaintiff could perform, including office helper, semi-automatic sewing machine
operator, and document specialist. Tr. 26. On that basis, the ALJ concluded that
21 Plaintiff was not under a disability, as defined in the Social Security Act, from the
date of application, February 20, 2019, through the date of the decision. Tr. 27.

ISSUES

Plaintiff seeks judicial review of the Commissioner's final decision denying him SSI under Title XVI. ECF No. 13. Plaintiff raises the following issues for this Court's review:

1. Whether the ALJ properly addressed the medical opinions in the record;
2. Whether the ALJ properly addressed Plaintiff's symptom statements; and
3. Whether the ALJ met her burden at step five.

DISCUSSION

1. Medical Source Opinions

10 Plaintiff argues that the ALJ failed to properly address the opinions from
11 Sally Forrest, MA, MHC and Jan Kouze, Ed.D. ECF No. 13 at 10-16.

12 For claims filed on or after March 27, 2017, new regulations apply that
13 change the framework for how an ALJ must weigh medical opinion evidence.

14 *Revisions to Rules Regarding the Evaluation of Medical Evidence*, 2017 WL
15 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new
16 regulations provide that the ALJ will no longer give any specific evidentiary
17 weight to medical opinions or prior administrative medical findings, including
18 those from treating medical sources. 20 C.F.R. § 416.920c(a). Instead, the ALJ
19 will consider the persuasiveness of each medical opinion and prior administrative
20 medical finding, regardless of whether the medical source is an Acceptable
21 Medical Source. 20 C.F.R. § 416.920c(c). The ALJ is required to consider

1 with the claimant, any specialization of the source, and other factors (such as the
2 source's familiarity with other evidence in the file or an understanding of Social
3 Security's disability program). *Id.* The regulations emphasize that the
4 supportability and consistency of the opinion are the most important factors, and
5 the ALJ must articulate how she considered those factors in determining the
6 persuasiveness of each medical opinion or prior administrative medical finding. 20
7 C.F.R. § 416.920c(b). The ALJ may explain how she considered the other factors,
8 but is not required to do so, except in cases where two or more opinions are equally
9 well-supported and consistent with the record. *Id.*

10 Supportability and consistency are further defined in the regulations:

11 (1) *Supportability.* The more relevant the objective medical evidence
12 and supporting explanations presented by a medical source are to
13 support his or her medical opinion(s) or prior administrative medical
finding(s), the more persuasive the medical opinions or prior
administrative medical finding(s) will be.

14 (2) *Consistency.* The more consistent a medical opinion(s) or prior
15 administrative medical finding(s) is with the evidence from other
16 medical sources and nonmedical sources in the claim, the more
persuasive the medical opinion(s) or prior administrative medical
finding(s) will be.

17 20 C.F.R. § 416.920c(c).²

18
19 ²The parties disagree over whether Ninth Circuit case law continues to be
20 controlling in light of the amended regulations, specifically whether an ALJ is still
21 required to provide specific and legitimate reasons for discounting a contradicted
opinion from a treating or examining physician. ECF Nos. 13 at 11-12, 17 at 3-6.

1 **A. Sally Forrest, MA, MHC**

2 On February 28, 2020, Ms. Forrest completed a Mental Medical Source
3 Statement and opined that Plaintiff had a moderate limitation in the abilities to
4 maintain attention and concentration for extended periods, to perform activities
5 within a schedule, maintain regular attendance and be punctual within customary
6 tolerances, to complete a normal workday and workweek without interruptions
7 from psychologically based symptoms and to perform at a consistent pace without
8 an unreasonable number and length of rest periods, to interact appropriately with
9 the general public, to respond appropriately to changes in the work setting, to
10 travel in unfamiliar places or use public transportation, and to set realistic goals or
11 make plans independently of others. Tr. 879-81. She also opined that Plaintiff
12 would miss an average of four or more days per month if working a 40-hour
13 workweek. Tr. 881. She additionally stated that Plaintiff's impairments would
14 cause him to be off task 26-50% of the work day. Tr. 881.

15 The ALJ found the opinion to be not persuasive stating that “[t]he extreme
16 limitations are inconsistent with the claimant’s reporting improvement in his
17 symptoms with medication and therapy (B15F/1). The opinion is also not well
18

19
20 The Ninth Circuit has held that the new regulations displace this prior caselaw.
21 See *Woods v. Kijakazi*, --- F.4th ---, 2022 WL 1195334 (9th Cir. Apr. 22, 2022).

1 supported by a thorough discussion of the evidence to support such extreme
2 limitations.” Tr. 24.

3 The ALJ’s finding regarding improvement with medication and therapy
4 speaks to the opinion’s consistency. To support this finding, the ALJ cited a single
5 record from his substance abuse treatment dated September of 2020, B15F/1, that
6 demonstrated a zero on the PHQ-9 and GAD-7. Tr. 951. Plaintiff reported
7 “[d]oing well. Continues to live with folks. They have custody of his two 14 year
8 old boys. Works on his parents[’] property and remains engaged in sons’
9 upbringing. Will go hunting next month with family. Denies changes in stability.”
10 Tr. 951. The ALJ failed to discuss how a single record from his substance abuse
11 treatment showed improvement in all his mental health impairments and
12 undermined the opinion. Furthermore, the records from October of 2019 show
13 similar statements: “Patient states he is doing well. Is getting ready to go hunting
14 in Republic. Denies cravings, withdrawals use ETOH since being seen.” Tr. 597.
15 Therefore, the ALJ failed to demonstrate that the September 2020 records show
16 anything more than someone doing consistently well in his substance abuse
17 treatment, which is consistent with the ALJ’s step two finding that the substance
18 abuse disorder was in remission, Tr. 17. This does not support a finding that
19 Plaintiff’s mental health impairments as a whole have improved. Therefore, the
20 ALJ’s determination regarding consistency is not supported by substantial
21 evidence.

1 The ALJ's second finding, that the opinion is not well supported by a
2 discussion of the evidence to support the opined limitations, speaks the opinion's
3 supportability. The Court acknowledges that the opinion did not include any
4 citation to evidence or discussion of treatment to support or explain the opined
5 limitations. Tr. 879-81. However, since the ALJ did not properly address the
6 opinion's consistency, the proper remedy is to remand this case for additional
7 proceedings for the ALJ to properly address the opinion's consistency. *See* 20 §
8 416.920c(b)(2) ("we will explain how we considered the supportability and
9 consistency factors for a medical source's medical opinions. . .").

10 **B. Jan Kouzes, Ed.D.**

11 On August 1, 2018, Dr. Kouzes completed a Psychological/Psychiatric
12 Evaluation form for the Washington State Department of Social and Health
13 Services. Tr. 462-67. She diagnosed Plaintiff with bipolar II disorder, opioid use
14 disorder in early remission, panic disorder, and PTSD. Tr. 464. She opined that
15 Plaintiff had a marked limitation in the abilities to perform activities within a
16 schedule, maintain regular attendance, and be punctual within customary
17 tolerances without special supervision, to communicate and perform effectively in
18 a work setting, to complete a normal work day and work week without
19 interruptions from psychologically based symptoms, and to set realistic goals and
20 plan independently. Tr. 464-65. She also opined that Plaintiff had a moderate
21 limitation in the abilities to understand, remember, and persist in tasks by
following detailed instructions, to learn new tasks, to adapt to changes in a routine

1 work setting, to ask simple questions or request assistance, and to maintain
2 appropriate behavior in a work setting. Tr. 464-65. The ALJ found the opinion to
3 be not persuasive finding that the opinion is based solely on Plaintiff's substance
4 abuse, is inconsistent with Plaintiff's reported activities, is inconsistent with
5 Plaintiff's improvement with medication and therapy, and is inconsistent with
6 Plaintiff's insight into maintaining treatment and therapy while also being
7 cooperative in the record. Tr. 22.

8 The ALJ's first rationale, that the opinion appears to be based solely on
9 Plaintiff's substance abuse, speaks to the supportability of the opinion.
10 Specifically, the ALJ found that "the claimant testified that he has been sober since
11 2019, and that his Suboxone treatment has worked well. Therefore, the opinion is
12 not well supported by the record during the relevant period where he largely
13 abstained from heroin use." Tr. 22. However, the finding that the opinion was
14 based solely on Plaintiff's substance use is not supported by the record. The
15 summary of Plaintiff's history discusses more than just his substance abuse, but his
16 bipolar disorder, anxiety, and depression. Tr. 462. It does include a summary of
17 his substance abuse history and legal history, Tr. 463, but that is a standard prompt
18 on the form. Furthermore, Dr. Kouzes completed a mental status examination that
19 showed a depressed mood and affect. Tr. 466-67. Therefore, there is nothing to
20 support a finding that the opinion was based solely on Plaintiff's substance abused
21 disorder.

1 The ALJ's second rationale, that it was inconsistent with his daily activities,
2 speaks to the consistency of the opinion. The ALJ found that the opinion was
3 inconsistent with Plaintiff's ability to live with his parents and have an active role
4 in his son's upbringing because it shows the ability to have ongoing structure. Tr.
5 22. The only record that the ALJ cites in support of this finding was a substance
6 abuse treatment note that stated: "Continues to live with folks. They have custody
7 of his twin 14 year old boys. Works on his parents['] properly and remains
8 engaged in sons' upbringing." Tr. 951. Here, the ALJ failed to discuss how not
9 having custody of his children and not living independently undermined the
10 opinion. While the new regulations displace the Ninth Circuit's increased
11 standards regarding medical source opinions, the ALJ is still required to provide
12 substantial evidence in support of her opinions. *See Woods v. Kijakazi*, --- F.4th --
13 ___, 2022 WL 1195334 at*6 (9th Cir. Apr. 22, 2022).

14 The ALJ's third rationale, that the marked limitations were inconsistent with
15 Plaintiff's reported improvement with medical and therapy, is not supported by the
16 record. Tr. 22. As discussed earlier, the citation the ALJ provides to support this
17 finding, (B15F/1), demonstrates that Plaintiff's substance abuse treatment is going
18 well. Tr. 951. However, treatment records from a year prior contained nearly the
19 same reports of successful treatment by Plaintiff. Tr. 597. Therefore, the ALJ
20 failed to demonstrate that the September 2020 records show anything more than
21 someone doing consistently well in his substance abuse treatment, which is
consistent with the ALJ's step two finding that the substance abuse impairment

1 was in remission, Tr. 17. This does not support a finding that Plaintiff's mental
2 health impairments as a whole have improved.

3 The ALJ's fourth rationale, that the opinion was inconsistent with Plaintiff's
4 insight into maintaining treatment and therapy while also being cooperative, speaks
5 to the consistency of the opinion. However, the ALJ failed to discuss how the
6 opinion was undermined by maintaining treatment, therapy, and being cooperative.
7 In support of this finding, the ALJ cited two exhibits containing substance abuse
8 treatment and provided no explanation. As discussed above, the ALJ is still
9 required to provide substantial evidence to support her determinations. Therefore,
10 this is not a sufficient reason to support the ALJ's rationale. This case is remanded
11 for the ALJ to properly address the medical opinions.

12 **2. Plaintiff's Symptom Statements**

13 Plaintiff argues that the ALJ erred in evaluating his symptom testimony.
14 ECF No. 13 at 16-19.

15 It is generally the province of the ALJ to make determinations regarding the
16 reliability of Plaintiff's symptom statements, *Andrews v. Shalala*, 53 F.3d 1035,
17 1039 (9th Cir. 1995), but the ALJ's findings must be supported by specific cogent
18 reasons, *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent
19 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's
20 testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d
21 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

The ALJ found Plaintiff's "statements concerning the intensity, persistence,
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1 and limiting effects of these symptoms are not entirely consistent with the medical
2 evidence and other evidence in the record for the reasons explained in this
3 decision.” Tr. 22. The evaluation of a claimant’s symptom statements and their
4 resulting limitations relies, in part, on the assessment of the medical evidence. *See*
5 20 C.F.R. § 416.929(c); S.S.R. 16-3p. Therefore, in light of the case being
6 remanded for the ALJ to readdress the medical opinions addressed above, a new
7 assessment of Plaintiff’s subjective symptom statements will be necessary.

8 **3. Step Five**

9 Plaintiff argues that the ALJ failed to meet her burden at step five. ECF No.
10 13 at 19-20. This argument is derivative of his argument that the ALJ failed to
11 properly weigh the medical opinions addressed above. Since the case is being
12 remanded for the ALJ to properly address the opinions as discussed above, a new
13 step five determination is required upon remand.

14 **CONCLUSION**

15 Plaintiff requests that the Court remand the case for an immediate award of
16 benefits. ECF No. 13 at 20.

17 The decision whether to remand for further proceedings or reverse and
18 award benefits is within the discretion of the district court. *McAllister v. Sullivan*,
19 888 F.2d 599, 603 (9th Cir. 1989). An immediate award of benefits is appropriate
20 where “no useful purpose would be served by further administrative proceedings,
21 or where the record has been thoroughly developed,” *Varney v. Sec'y of Health &*
Human Servs., 859 F.2d 1396, 1399 (9th Cir. 1988), or when the delay caused by

1 remand would be “unduly burdensome[.]” *Terry v. Sullivan*, 903 F.2d 1273, 1280
2 (9th Cir. 1990); *see also Garrison v. Chater*, 759 F.3d 995, 1021 (9th Cir. 2014)
3 (noting that a district court may abuse its discretion not to remand for benefits
4 when all of these conditions are met). This policy is based on the “need to
5 expedite disability claims.” *Varney*, 859 F.2d at 1401. But where there are
6 outstanding issues that must be resolved before a determination can be made, and it
7 is not clear from the record that the ALJ would be required to find a claimant
8 disabled if all the evidence were properly evaluated, remand is appropriate. *See*
9 *Benecke*, 379 F.3d at 595-96; *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir.
10 2000).

11 The Court finds that further administrative proceedings are appropriate. *See*
12 *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 2014)
13 (remand for benefits is not appropriate when further administrative proceedings
14 would serve a useful purpose). Here, the two opinions that need to be readdress
15 are not consistent. Ms. Forrest opined moderate limitations and Dr. Kouzes opined
16 moderate to marked limitations. Therefore, should these opinions be found
17 persuasive on remand, these differences would need to be resolved.

18 On remand, the ALJ must readdress the medical opinions discussed above,
19 readdress Plaintiff’s symptom statements, make a new RFC determination, and
20 make a new step five determine. In addition, the ALJ should supplement the
21 record with any outstanding medical evidence and take testimony from a
vocational expert at any remand proceedings.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion for Summary Judgment, ECF No. 13, is **GRANTED**,

3 **in part**, and the matter is **REMANDED** to the Commissioner for

4 additional proceedings.

5 2. Defendant's Motion for Summary Judgment, ECF No. 17, is **DENIED**.

6 The District Court Clerk is directed to enter this Order and provide copies to
7 counsel. Judgment shall be entered for Plaintiff and the file shall be **CLOSED**.

8 **DATED** June 6, 2022.

9 
10 _____
11 LONN R. SUKO

12 Senior United States District Judge
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